IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.198 OF 1999

1) Graduate Engineers' Association,
a Society, registered under the
Societies Registration Act, 1860,
represented herein by its
Vice-President,
Ms. Reshma Mathew, Margao, Goa.

2) Ms. Reshma Mathew, Junior
Engineer, (BE), Electricity
Department, Division VIII,
Margao, Goa.

3) Shri Jose Elizeu D'Mello,
Junior Engineer (BE),
Electricity Department, Division IV,
Margao, Goa. ..... Petitioners.

V/s.

1) State of Goa, through its
Chief Secretary, having office at
Secretariat, Panaji, Goa.

2) The Chief Engineer, Government
of Goa, Electricity Department,
Panaji, Goa.

3) Goa Public Service Commission,
through its Secretary, having
Office at EDC House, Panaji, Goa.

4) Shri K.J. Joy, Assistant
Engineer, Sub-Division III,
(Electrical), Valpoi, Goa.

5) Shri Bazil Alvares,
Assistant Engineer, Sub-Division IV,
(Electrical), Cuncolim,
Salcete, Goa.

6) Shri Gopalkrishna B. Naik,
Assistant Engineer, Sub-Division IV
(Electrical), Vasco-Goa.

7) Shri Paul Fernandes, Assistant
Engineer, Electrical Division II
(Stores), Margao, Goa. ..... Respondents.

Junior Engineers Association,

Vth Floor, Vidhyut Bhavan,
Aquem, Margao, Goa, represented
by its President Shri Siddhart
Sakhande (JE). ..... Intervenor.

Mr. M.S. Sonak, Advocate for the Petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R. Bharne, Government Advocate for respondents No.1 and 2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Advocate for respondent No.3.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for respondents No.4, 5, 6 & 7 and the Intervenor.

CORAM : V.G. PALSHIKAR &
P.V. HARDAS, JJ.

DATE : OCTOBER 6, 2003.

ORAL JUDGMENT : (Per PALSHIKAR, J.)

By this petition, the Graduate Engineers' Association with some Engineers have challenged the fresh Rules framed by the Government, called "the Government of Goa, Office of the Chief Electrical Engineer, Group 'A' and 'B', Gazetted Posts, Recruitment Rules, 1998", whereby a distinction as existing between Diploma holders and the Decree holders (Engineering) which earlier existed was done away with for the purpose of fixing eligibility for promotions. The petitioners' challenge in this petition, is that by doing away with the distinction provided by 1980 Rules, the State has treated unequals as equals. This, according to the Counsel for

the petitioners, has resulted in denial of promotional avenue and resultant stagnation of the Degree-holder Engineers which, according to the Judgment of the Supreme Court, as relied upon by the learned Counsel is liable to be avoided.

2. The second ground as raised, as a challenge to these Rules was that these Rules effect change in condition of service and, therefore, as per requirement of the State Re-organization Act, 1987 prior sanction of the Government of India for these Rules was necessary. What has been done by these Rules is to provide condition of eligibility for promotions to the post of Assistant Engineer. It does not provide for any new condition of service or change therein. A person holding qualifications as regards to the post of Assistant Engineers is a condition of eligibility, for which he would be entitled to pay of Rs.300-700 is a condition of service. If such a service condition has to be changed, prior approval is necessary. For change of eligibility, no such approval is necessary. There is, therefore, no reason for interference on this ground also.

3. Lastly, it was contended that this has resulted in treating the unequals as equals. This aspect of the matter has also been covered by the Judgment of

the Supreme Court in the case of **Union of India and another vs. R. Iyyaswamy and others,** reported in (1997) 7 Supreme Court Cases 727 whereby the Supreme Court has held that an equal treatment to diploma and degree-holders by departing from earlier policy of giving preferential treatment to degree-holder, does not amount to discrimination or treating the unequals as equal. Thus, there is no substance in this petition. The same is rejected. Rule discharged.

V.G. PALSHIKAR, J.

P.V. HARDAS, J.

ssm.